

93. (Previously Presented) The computer readable medium of claim 92, wherein deciding on intervention further comprises selecting between options including at least a live-voice response and a recorded response.

94. (Previously Presented) The computer readable medium of claim 93, wherein deciding on intervention further comprises determining to provide a live-voice response.

95. (Previously Presented) The computer readable medium of claim 93, wherein deciding on intervention further comprises determining to provide a recorded response.

REMARKS

The Office Action mailed July 19, 2004 has been received and reviewed. Claims 1-95 are in the case. Of these claims, claims 39-75 have been withdrawn by prior election. Claims 1-4 and 8-21 stand rejected under 35 U.S.C. §102(e). Claims 5, 7, 22-27, 29-38, 76-80, and 82-95 stand rejected under 35 U.S.C. §103(a). Claims 6, 28, and 81 stand rejected under 35 U.S.C. §103(a).

For the reasons set forth below, claims 1-38 and 76-95 are believed to be in condition for allowance. Applicant respectfully requests favorable reconsideration of the application in view of the preceding amendment and the following remarks.

Rejection of Claims 1-4 and 8-21 Under 35 U.S.C. §102(e)

Claims 1-4 and 8-21 stand rejected under 35 U.S.C. §102(e) as being anticipated by

Walker et al. (6,216,111). For a prior art reference to anticipate, every element of the claimed invention must be identically disclosed in a single prior art reference; and those elements must be arranged or connected together in a single reference in the same way as specified in the patent claim.

Referring to claim 1, the Walker patent does not disclose the interleaving of responses from a human agent and a recorded script selected by the agent. In Column 8, lines 3 and 4, the Walker patent mentions that "the central controller signals a live agent to speak with the customer." The agent does not make any decision regarding the switch from machine presentation to script. Thus, he does not select when or how agent responses (either live voice or recorded) are interleaved to form an overall conversational sales presentation. Accordingly, Walker does not teach each and every limitation of newly amended claim 1.

In contrast, Applicant's "invention allows the transparent interleaving of live voice and prerecorded script by the agent." *See* page 13, lines 13 and 14. Figures 5 and 6, and the detailed description related thereto, highlight how "the agent determines to play scripted questions 190" and how "the agent may interject with an interjection statement 192 such as "yes," "no," "uh huh," laughter, and the like." *See* page 18, lines 17-18 and page 19, lines 6-7. "The user may also select a scripted ending statement 194 such as "thanks for purchasing our product," or a description of the product selected by the contact." *See* page 19, lines 7-9. Applicant's invention discloses a system "configured to allow the agent or user to selectively provide prerecorded waveforms in the form of scripted dialog." *See* page 19, lines 9-11.

Applicant's newly amended claim 1 is well supported by Applicant's specification and is

not anticipated by the prior art. Reconsideration of claim 1 is therefore respectfully requested.

With respect to claims 2-4 and 8-21, claims that are dependant on an allowable base claim cannot be properly rejected under 35 U.S.C. §102(b). As presented hereinabove, Applicant asserts that claim 1 is not anticipated by the prior art of record, specifically Walker. Thus, claims 2-4 and 18-21 are allowable for at least the reason that they are dependant on an allowable base claim. Reconsideration of claims 2-4 and 18-21 is therefore respectfully requested

Rejection of Claims 5, 7, 22-27, 29-38, 76-80, and 82-95 Under 35 U.S.C. §103(a)

Claims 5, 7, 22-27, 29-38, 76-80, and 82-95 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Rogers et al. (US 5,946,386). To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (See MPEP 2143.)

As presented hereinabove, Walker fails to disclose, teach, or suggest a device providing a agent or user selected scripted dialogue. There is no suggestion in any of the prior art referenced provided by the examiner to modify Walker to obtain Applicant's claimed device.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no

suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

The purpose, in Applicant's claims, of having the script in a voice wave form created independently from the human agent is to allow the use of a select number of professional voice actors to create the recorded scripts for use by thousands of agents without having to record the voices of thousands of agents. With the hardware and software disclosed in Applicant's application, voice created independently from the agent can be used for the primary sales presentation and the agent's own voice can be used to provide appropriate interjections and the customer will not be able to tell the difference between the two, or that the customer is really interacting with a computer.

The Rogers patent does not teach anything about the creation of voice waveforms, whether by a voice actor, or by a human. Rodgers teaches the use of a call management system which transfers call control to a user workstation, thereby providing improved capabilities for the use without the limitations of telephone systems. Rogers allows for specific call handling options when a VIP call is detected. However, this option does not address the creation of a voice waveform to be played that is independent from the agent's voice. Accordingly, neither Walker nor Rogers teaches voice waveforms created independently from the human agent, nor is there any suggestions to combine the teachings in these patents to get to claims 5 of Applicant's invention.

Rejection of Claims 6, 28, and 81 Under 35 U.S.C. §103(a)

Claims 6, 28, and 81 stand rejected under 35 U.S.C. §103(a) as being unpatentable over

Walker in view of Rogers and further in view of Miner et al. (US 5,652,789). As discussed above, to establish a prima facie case of obviousness, three basic criteria must be met. Miner fails to add or suggest the modification of anything in Walker or Rogers to get to Applicant's claims 6, 28 and 81. Miner does not teach anything regarding the voice waveforms or files to be played to the customer that are not created by the agent himself. Miner teaches electronic assistants to handle certain aspects of calls and then transfer the call to the intended live recipient. The electronic assistant in Miner does not attempt to appear as the live recipient. In fact, in Miner, the electronic assistant announces to the caller, "I'm the electronic assistant for John Smith." Neither Walker, Rodgers, nor Miner, requires the masking of a prerecorded script presentation to appear as a live voice conversation with a customer. Thus, there is no need nor suggestion to create human-sounding waveforms or recordings in any of these patents. There is also no need nor suggestion to use recorded voice actors as opposed to computer-generated sounds that approximate human voice. Likewise, because neither Walker, Rodgers, nor Miner teaches a method or apparatus for making a human agents live voice sound like a voice recorded independently from the agent, there is no suggestion in these patents to have voice waveforms created independently from the human agent.

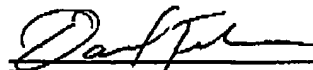
Thus, Applicant's invention is not anticipated nor rendered obvious by Walker, Rogers, or Miner and Applicant respectfully requests reconsideration of claims 1-38 and 76-95 in light of the amendment and remarks above.

In the event that the examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the examiner is

respectfully urged to initiate the same with the undersigned.

DATED this 19th day of October, 2004.

Respectfully submitted,



David B. Fonda
Reg. No. 39,672
Attorney for Applicant

David B. Fonda
Attorney at Law
8 East Broadway
Suite 600
Salt Lake City, UT 84111
ph: (801) 994-4646
e-mail: fonda@utahpatentlaw.com